

**GILLETTE REGIONAL WATER SUPPLY SYSTEM
JOINT POWERS AGREEMENT**

**City of Gillette, Wyoming
County of Campbell, Wyoming**

THIS JOINT POWERS AGREEMENT is made and entered into by the duly authorized representatives of Campbell County, herein after referred to as the “County”, and the City of Gillette, herein after referred to as the “City”, both of which are located in the State of Wyoming and are both “agencies” as defined by W.S. §16-1-103(a)(i) and for the purposes of this Agreement shall be referred to as “Participating Agencies”.

WHEREAS, the Participating Agencies desire to secure water supply for the region in a manner that meets the long term needs for public health and safety, resource management, sustainability, and economic development; and

WHEREAS, the Participating Agencies believe this regional water supply approach will provide high quality water in a cost effective manner, protect local underground Fort Union aquifer systems, and promote regional cooperation and benefits; and

WHEREAS, the City will confirm an adequate water supply from Madison Aquifer sufficient to meet demands forecasted for regional use by the year 2038; and

WHEREAS, the Participating Agencies agree that a regional supply system will best serve the City, surrounding Improvement and Service Districts (District), and other water systems within the Designated Service Area (DSA), collectively referred to as “Wholesale Customers”; and

WHEREAS, the Participating Agencies desire to promote the equitable distribution of water throughout the region and in doing so develop access to redundant sources of supply for routine, seasonal, and emergency purposes; and

WHEREAS, the Participating Agencies desire to achieve a regional supply system (System) that will be balanced, fair, equitable, and sufficient for their citizens and the region at large; and

WHEREAS, the Participating Agencies desire to establish cooperation and service policies among each other that protect the precious water resources and use them in a sustainable way; and

WHEREAS, the Participating Agencies wish to secure funding from sources, public or private, and to administer those funds in an effective and non-duplicative manner for the needs of the region; and

WHEREAS, the Participating Agencies desire to identify the water supply needs of the region in Campbell County through a continuing and comprehensive process of assessment; and

WHEREAS, the Participating Agencies believe it is desirable to create a forum to facilitate an integrated effort to resolve water supply issues; and

WHEREAS, the Participating Agencies desire, pursuant to the provisions of the Wyoming Joint Powers Act, W.S. Section 16-1-102 through 16-1-109 inclusive (the Act), to execute this Joint Powers Agreement to provide, conduct and perform the planning of, and the funding for, a regional water supply system.

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

SECTION I.

Purpose

The Participating Agencies hereby agree that the purpose of this agreement is:

1.1 To execute this Joint Powers Agreement, hereinafter referred to as the "Agreement" or "JPA", for the sole purpose of providing a joint and cooperative method and vehicle for the planning of, funding for, construction and operation of a regional System for water supply.

SECTION II.

Organization & Responsibilities

2.1 The City and County, as Participating Agencies, have developed this JPA including establishing a Regional Water Panel (Panel) to execute certain specified provisions within this JPA. The Panel created by this Agreement shall not constitute a separate body corporate and politic or legal entity separate and distinct from the Participating Agencies but rather as an administrative board to aid and assist the Participating Agencies in the administration of this Agreement and the requirements of W.S. 16-1-102, et. seq. The method for appointment, terms, and vacation of panel positions is set forth in Section V.

2.2 The operation of the regional System including all Project facilities, infrastructure, and components along with existing City non-Project facilities shall be the responsibility of the City.

SECTION III.

Duration

3.1 This Agreement is effective on the date of the signature last affixed to the signature page and shall be of unlimited duration unless duly dissolved, amended, expanded or otherwise changed by appropriate action of the Participating Agencies. Dissolution can only

occur with a unanimous vote of the Participating Agencies. Sufficient prior notice is defined as no less than 180 days prior to the intended date of dissolution. Any dissolution must allow for sufficient prior notice and must provide for the continuation of the regional System and the continuance of service to contracted Wholesale Customers receiving water from the Project. Upon dissolution, rate making principles set forth herein shall be preserved through water service agreements or other comparable arrangements.

3.2 In the event of dissolution or termination of this Agreement, the distribution of any assets, facilities, improvements or other property shall be to each Participating Agency which shall be determined to have an ownership interest and/or right to share in the distribution equivalent to the ratio of value of funds or assets contributed or paid by that Participating Agency to the value of funds and assets contributed by all Participating Agencies.

SECTION IV. **Project Components**

4.1 The regional System, hereinafter referred to as the "Project", including all new water supply project facilities, infrastructure, and components along with existing City supply facilities shall be under the ownership of the City.

4.2 The Project will include all new and existing water supply facilities, infrastructure and components necessary to provide wholesale water supply to the City and other Wholesale Customers. The procedures, responsibilities, administration, funding, rates, charges, and service policies related to the Project are subject to this Agreement regardless of ownership of said facilities, infrastructure and components.

4.3 The Project components shall be as described below and as graphically represented on the Project map, attached as Exhibit A to this Agreement. A database of assets is attached as Exhibit B to this Agreement. Exhibit A and B will be updated when new Project supply components are added.

4.4 All Project components will be designed and constructed to adhere to City standards unless the City authorizes an exception. By definition, all other facilities not identified as outlined above will be deemed non-Project components. In general, supply facilities located on the delivery side (upstream) of and including master meters will be considered Project components and supply facilities and distribution systems located beyond (downstream of) the master meters will be considered non-Project components unless they benefit the regional system.

SECTION V. **Governance**

5.1 Responsibilities of the City - As owner of the Project, the City will be responsible for making daily and strategic decisions considered in the best interest of Wholesale Customers as a whole and, in the course of doing so, will receive input from the County, representatives of the Wholesale Customers, and the Regional Water Panel. The City is committed to manage,

administer, finance, and operate the Project in a business-like manner making decisions that are equitable and representative of all customers.

5.2 Regional Water Panel Creation and Composition - A new group with limited authority will be formed under the JPA. The group shall be named the "Regional Water Panel" (Panel).

5.3 Composition of Panel - The Panel shall be comprised of seven (7) persons, none of whom shall be serving on the governing bodies of the Participating Agencies at the time of appointment and appointed as follows:

- a) Three (3) representatives appointed by Campbell County, Three (3) representatives appointed by the City of Gillette and One (1) representative from the Wyoming Water Development Commission (WWDC) or their appointee.
- b) Upon appointment of the initial Panel, the terms of the Panel members shall be staggered as follows:
 - Each Participating Agency shall appoint one member for five (5) years.
 - Each Participating Agency shall appoint one member for four (4) years.
 - Each Participating Agency shall appoint one member for three (3) years.
 - The WWDC shall appoint one member for four (4) years
- c) All appointments made thereafter shall be for a full term of five (5) years.
- d) Vacancies for unexpired terms shall be filled by appointment of the governing body of the Participating Agency who appointed the person whose seat is vacated. If after four years from complete Project construction, the Participating Agencies and WWDC deem that the participation of WWDC is no longer necessary, the remaining members will select the replacement for the WWDC member.
- e) An appointed panel member may be removed by a Participating Agency who made their appointment for the following reasons:
 - Failure to attend three (3) consecutive regularly scheduled meetings without reasonable justification.
 - Failure or refusal to perform official duties.
 - With or without cause.

5.4 Powers of Panel - The Panel shall have the power to make decisions, as specified in this Agreement. In exercising, performing or carrying out any power, privilege, authority, duty or function under this Agreement, the Panel, within the limits of the authorities set out in this Agreement, shall exercise and enjoy the following powers, privileges and authority:

- a) The establishment of a Panel meeting schedule wherein the business of the Panel will be conducted, and meetings shall be no less frequent than semi-annually.

b) The ability to call special meetings in addition to any regularly scheduled meetings provided such meetings are held in accordance with Wyoming State Law and are duly noticed to the Public.

c) Review supply system financing strategies, annual operations & maintenance budgets, and annual capital budgets.

d) Accept or reject rates and charges as proposed by the City for regional supply costs prior to adoption by the City.

e) Provide recommendations to the Participating Agencies regarding requests for water from potential Wholesale Customers outside the DSA and the corresponding expansion of the DSA.

f) Voting – Each Panel member represents one equal vote. Voting requirements shall be as follows:

- For the Panel to take action, a quorum of four members must be present.
- A Panel member must be present at the meeting in order to vote on Panel decisions.
- All matters decided by the Panel shall be by a simple majority vote.

g) The execution of a dispute resolution process. It is agreed that disputes between the Participating Agencies and/or Wholesale Customers over matters related to implementation of this Agreement, Water Service Agreements, or regional supply rates and charges will be handled through the dispute resolution process described below.

g.1) General Disputes. The dispute resolution process for general disputes shall follow a three-step process.

Step 1: The first step in any dispute involves a good faith effort on the part of the disputing parties to resolve any disagreement by informal discussions among each participant.

Step 2: If at any time a party to a dispute determines that such informal discussions in Step 1 will not result in a resolution, that party may request a review be initiated by the Regional Water Panel. The Regional Water Panel's decision will be made in writing to the Parties within 45 days.

Step 3: Either Party may appeal the decision of the Panel within 30 days from the date of the Panel's written decision through the Wyoming legal system in a forum using a judge without a jury.

Each party will bear their own costs of the dispute resolution process.

g.2) Rate-related Disputes.

The dispute resolution process for disputes related to wholesale supply rates and System Development Charges shall follow the three-step process as set forth below.

Step 1: Same as g.1)

Step 2: Same as g.1)

Step 3: The decision of the Panel may be appealed within 30 days to a Rate Technical Panel. The Rate Technical Panel shall be comprised of one rate expert selected by the City, one rate expert selected by the County, and one rate expert jointly selected. In Step 3, the Rate Technical Panel's decision shall be binding.

The cost of the Rate Technical Panel shall be borne as follows:

- The City shall pay for their selected expert.
- The County shall pay for their selected expert.
- The City and the County shall share equally in the cost of the jointly selected expert.

h) To adopt such rules as it determines to be convenient and appropriate for the conduct of its business, including without limitation rules and procedures for meetings.

i) Costs and expenses of the Panel will be included in the Project's operating budget which shall be approved by the Participating Agencies.

SECTION VI.

Amendments

6.1 This Agreement may be amended but only through the adoption of an amendment petition by both of the governing bodies of the participating agencies.

SECTION VII.

Service Requirements

7.1 The Project shall serve a Designated Service Area (DSA) as identified in Exhibit C, which by this reference is incorporated herein, and which encompasses areas within Campbell County. The DSA will be established, maintained, and updated by the Participating Agencies and the DSA will be consistent with Campbell County Regional Planning Policies. In addition, the Project will continue to fulfill agreements and service obligations of the City to existing wholesale customers in Crook County.

7.2 Eligibility for connection to the regional water system:

- a) Any existing system as of December 21, 2010 within the DSA may request connection to the Project on a voluntary basis and will be served upon execution of a Water Service Agreement which specifies the duties and responsibilities of the Wholesale Customer and the City.
- b) Subject to local ordinances, regulations, and exemptions, new subdivisions or Districts located within the DSA which are approved after December 21, 2010 and after Project start-up, will be required by the City or County, depending on their respective jurisdictions, to connect and be served by the Project upon review by the Panel and upon execution of a Water Service Agreement.
- c) Potential wholesale customers outside of the DSA may request connections to the regional water supply system through petitions to the Panel. The Panel shall review the petitions and provide recommendations to the City and County for approval relating to the disposition of the requests and any corresponding changes to the DSA. Considerations in the review and approval process will include, but not necessarily limited to, Project water availability, county planning considerations, economic feasibility for the Project and the customer, and the viability of other potential water supplies for the potential customer. Approval of such connections will result in amendments to the DSA and execution of Water Service Agreements.

7.3 Types of Service - Two types of service are available for the Project:

- a) Type 1 – Service connections to the Madison pipelines, receiving only Madison well field water and limited to those systems served through an extension from either the existing or new Madison wellfield transmission pipelines.
- b) Type 2 – Service connections to the Gillette water distribution system, receiving only blended Madison and in-City source water. Type 2 service connections will require extensions from the existing City water distribution grid.

7.4 Levels of Service (LOS) - For those potential Wholesale Customers within the Designated Service Area (DSA) of the Project and interested in being serviced by the Project, there are five (5) options for LOS. The available LOS are as follows:

- a) Level of Service A - Level of Service A is for continuous, year round wholesale water service.
- b) Level of Service B - Level of Service B is for seasonal service for peak or off-peak seasons of the year.
- c) Level of Service C - Level of Service C is for emergency and/or fire flow service only.

- d) Level of Service D - Level of Service D is for potential buy/sell back service for water.
- e) Level of Service E - Special or additional services not listed above.

Changes to LOS for existing Wholesale Customers shall be negotiated between the City and the Wholesale Customer requesting a change in their LOS.

7.5 Water Service Agreements - Each Wholesale Customer shall enter into a Water Service Agreement (WSA) with the City prior to receiving supply from the Project. The WSA shall specify the terms and conditions of service. Any disputes relating to the WSA shall follow the dispute resolution process identified in Section V. The City shall not require any Wholesale Customer to enter into a pre-annexation agreement or require annexation as a condition of entering into a Water Service Agreement or obtaining water from the regional supply system. Water Service Agreements will include, as a minimum:

- a) Issues relating to water rates and system development charges.
- b) Requirements that the funding, design, permitting, land acquisition, construction engineering, and construction of any extensions will be the responsibility of the Wholesale Customer.
- c) The extensions will be constructed in accordance with city standards and will include a master meter and backflow prevention.
- d) Upon completion of the construction by the Wholesale Customer and acceptance by the City, the extension will be turned over to the City for operation and maintenance. Upon retirement of any debt associated with the construction by the Wholesale Customer, the extension will be sold to the City for one dollar.
- e) Unless otherwise requested by the Wholesale Customer and approved by the City, the Wholesale Customer will retain operational responsibility of its own non-Project facilities.
- f) Special provision as related to Type and Level of Service.
- g) Other provisions, as necessary.

SECTION VIII.

Financing, Budgeting, Rates and Charges

8.1 Initial Project Capitalization - Initial capitalization of the Project shall be funded through a Joint (City/County) Financing Plan to be developed and based on monies from the State of Wyoming, Capital Facility Tax Funds, monthly rates, system development fees (SDCs), or other funds.

8.2 Project Extension to Wholesale Customers - Project extensions to Wholesale Customers shall comply with procedures established in Water Services Agreements and funding for the extension shall be the ultimate responsibility of the Wholesale Customer unless other funding mechanisms are available.

8.3 Non-Project Distribution Systems - Funding responsibilities for internal distribution system improvements (non-Project components) are the responsibility of the Wholesale Customers Unless otherwise requested by a Wholesale Customer seeking service from the City related to non-Project components, and agreed to by action of the Gillette City Council, that Wholesale Customer will retain operational responsibility of its own existing non-project facilities by using its own staff or contracting for services from independent contractors having staff with appropriate certification, qualifications, and equipment.

8.4 Financial Policies - The City and County commit to implement the Project financial policies as presented in Exhibit D to this Agreement.

8.5 Budget - The City shall, no less frequently than once each calendar year, prepare a proposed budget setting forth the anticipated capital and operating costs for the Project for the next twelve (12) months. The budget shall include the anticipated costs of such activities, a brief explanation of the need for such activities and a schedule for the payment of the proposed budget.

8.6 Monthly Rates - Monthly rates calculated for the Project's wholesale supply shall be developed by the City in accordance with generally accepted rate setting methodologies as described in the AWWA M-1 Manual Principals of Water Rates, Fees, and Charges, latest edition. The Participating Agencies agree that this methodology, attached as Exhibit E, will be applied to the calculation of wholesale supply rates.

Annually, the City shall present to the Panel the monthly rates and SDCs recommended for the following year. The Panel shall either accept or reject the City's recommendations. If the Panel accepts the proposal, the City shall adopt and enact the rates according to its appropriate legislative action. In the event the Panel rejects the City's recommendations, the Panel shall clearly state the reason(s) for rejection and the City shall recalculate rates and present a revised proposal to the Panel for acceptance. In the event the City does not agree with the reasons for rejection by the Panel, the Dispute Resolution Process outlined in Section V shall govern the decision.

The Participating Agencies agree that the regional wholesale supply rate will be calculated based on the Project budget and will be uniformly charged to all Wholesale Customers at the same LOS. Further, the Participating Agencies acknowledge that in addition to the regional supply related costs of the Project, each system is responsible for development and application of its own local distribution related costs. Further, it is agreed that at no time shall a local retail rate, which includes both supply and distribution related costs, be set at an amount that is less than the wholesale supply rate calculated for the Project (i.e. local funding credits shall not exceed local distribution costs).

8.7 Cost of Service and Rate Design Studies - The Participating Agencies agree that a comprehensive cost of service and rate design study shall be performed at periodic intervals, not to exceed every five (5) years, with annual reviews and revisions made as needed. The cost of said studies shall be borne by the City and appropriately become part of the cost of the regional water supply rate calculation.

8.8 System Development Charges - Charges for connection shall be on a quantified equivalent residential unit (ERU) basis through establishment of a supply System Development Charge (SDC). Such SDC shall be calculated in accordance with generally accepted rate setting methodologies as described in the AWWA M-1 Manual Principals of Water Rates, Fees, and Charges, latest edition. The Participating Agencies have agreed to a generally accepted methodology for calculating SDCs which is attached as Exhibit F to this agreement.

SECTION IX.

System Infrastructure and Regulatory Compliance Standards

9.1 The City will have responsibility for compliance with all federal and state regulations pertaining to the USEPA Safe Drinking Water Act (SDWA) and other qualitative or quantitative rules, the costs of which will be included in the Project. In general, the City will take prompt and appropriate actions mandated by regulation, but may seek customer or committee input on aesthetic or other non-regulatory matters before taking action considered to be in the best interests of regional customers as a whole.

9.2 Water provided by the Project must be SDWA compliant at the wholesale metering point. Wholesale Customers retaining ownership and operational obligations will be responsible for SDWA compliance throughout their own source, storage, and distribution facilities. If Wholesale Customers opt to sell water back to the Project, they must ensure it is SDWA compliant before supplying Project facilities and, if not compliant, may be disconnected from the Project. All Wholesale Customers will be required to install, monitor, and maintain appropriate levels of cross-connection control devices at their expense.

SECTION X.

Indemnity of Members and Officers and Limits of Liability

10.1 Each Participating Agency shall indemnify its own members according to their own indemnity and limitation of liability capacities.

10.2 IN WITNESS WHEREOF, the Participating Agencies have caused this Agreement to be made and executed on the respective undersigned date, in accordance with the authorizations contained and Resolutions duly adopted by the Board of County Commissioners of the County of Campbell, Wyoming, and the City Council of the City of Gillette, Wyoming.

CITY OF GILLETTE, WYOMING


Duane Evenson, Mayor


(SEAL)
ATTEST:


City Clerk

CAMPBELL COUNTY, WYOMING, acting by and through the Campbell County Board of Commissioners


Roy Edwards, Chair

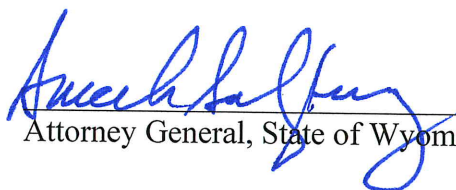
(SEAL)
ATTEST:


Campbell County Clerk Deputy

APPROVAL BY ATTORNEY GENERAL

In accordance with Wyo. Stat. §16-1-105(a)(ii), the Wyoming Attorney General has reviewed this Gillette Regional Water Supply System Joint Powers Agreement and determined that the Agreement is compatible with the laws and constitution of the State of Wyoming. The approval of this Agreement by the Attorney General is limited to the terms and conditions of the Agreement itself, and the approval does not extend to any individual project nor the financing of any individual project contemplated under the Agreement itself.

Approved this 4th day of January, 20 11.



Attorney General, State of Wyoming